

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

MARK AMOS BARKER  
ADC #139988

PLAINTIFF

v.

No. 3:18-cv-137-DPM-JTR

RONNIE COLEMAN, Jail Administrator,  
Crittenden County Jail; WILLIAM, Officer,  
Crittenden County Jail; and MANDY  
CHILDRESS, Nurse, Crittenden County Jail

DEFENDANTS

ORDER

On *de novo* review, the Court partly adopts and partly declines the recommendation, *No* 52, and sustains the Defendants' objections, *No* 53. FED. R. CIV. P. 72(b)(3). Barker says that he submitted a grievance about the July 21st assault. *No* 40 at 2, 3 & 5. But that statement isn't signed, dated, and certified as true and correct under penalty of perjury. The Court therefore can't consider it in deciding the motion for summary judgment. *Zubrod v. Hoch*, 907 F.3d 568, 574–75 (8th Cir. 2018). The Court understands the Magistrate Judge's skepticism about the jail's recordkeeping; it is plausible that Barker filed a grievance that the jail lost. But proof must be met with proof at the summary judgment stage. And without a sworn statement from Barker, there is no genuine issue of material fact on exhaustion. Defendants' motion for partial summary judgment, *No* 35, is therefore granted. Barker's failure to protect claim and denial of medical care

claim related to the May 24th alleged assault go forward. All other claims are dismissed without prejudice for failure to exhaust.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

3 March 2020